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IN THE

SUPREME COURT

OF THE

United States of America

JAMES MONROE JEFFERSON,
Plaintiff and Appellant,
vs.
CHRONICLE PUBLISHING COMPANY, a California Corporation,
Defendant and Respondent.

BRIEF OPPOSING MOTION TO DISMISS OR AFFIRM APPEAL

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Respondent argues two points in support of its motion to dismiss or affirm the appeal; that is, first, the right of appellant to demand a retraction as a good, sufficient and valid substitution for the right to sue for and recover general damages for libel; second, it is proper to put newspapers in a class by themselves and give them privileges and immunities which are not granted to persons who publish a libel through some other medium.

In support of each of said points, respondent cites the case of *Werner vs. South California Newspapers,*

35 Cal. 2d 121, 216 P 2d 825. However, it should be noted that this Honorable Court accepted an appeal from the decision of the California Supreme Court in that case, (71 S. Ct. 81) but before decision was rendered, the appeal was dismissed by appellant (71 S. Ct. 290). Furthermore, the decision of the California Supreme Court was by a divided court, two justices dissenting. The same two justices dissented in this case, as will appear in the record, and expressed the opinion that the question should be reconsidered.

In considering the facts, it must not be overlooked that the libel in this case was knowingly, falsely and maliciously published for the purpose of injuring the plaintiff.

RIGHT TO DEMAND A RETRACTION IS NOT AN ADEQUATE REMEDY.

Under common law and under California law, a person libelled is entitled to recover general damages. Sec. 48A of the California Civil Code, according to respondent, established a new remedy for libel published in a newspaper by giving the person libelled the responsibility of demanding a retraction. The old remedy of a suit for damages is not only denied, but a responsibility to be exercised within 20 days is placed upon the injured person. If he fails to act on that responsibility, he is denied all rights to any general damages whatsoever, however much the libel might have injured him and even though it was knowingly, falsely and wantonly published for the purpose of injuring him.

Appellant is thus deprived of his property without due process of law, for certainly his right to damages is a property right, and it is taken from him and instead he is given a burden. And the performance of the burden does not result in securing for him the property to which he is entitled because of the wrongful injury. It is only another step to make it impossible for him to recover such property, that is, damages for the injury suffered. As stated by this Court, "He is saddled with the onerous burden of proof which need not be borne by Californians generally". *Oyama vs. State of California,* 332 U. S. 633, 68 S. Ct. 269, 92 L. Ed. 249.

THE CLASSIFICATION OF NEWSPAPERS FOR THE PURPOSE OF RETRACTION IS IMPROPER.

If it is assumed for the sake of argument that retraction is a good, sufficient remedy for libel, there is no justification for limiting its application to newspapers and denying it to libellants who publish the libel in some other manner. The value of a retraction is that the person who read the libel will have the mistake corrected. This is only effective if each person who read the libel will thereafter read the retraction and be convinced that the original falsehood was incorrect and untrue. Newspapers are read by great numbers of people, and of all the many thousands reading a libel, there may be many, in fact possibly the majority of them, who will not read or even see the retraction. Furthermore, the attention-attracting elements of the libelous story will not be present in the retraction story, thereby causing it to be ignored by the same persons who were attracted to and read the libelous story. The retraction is, therefore, ineffective.

On the other hand, a libel published in a letter addressed to a specific person could be very effectively retracted by a letter addressed to the same person. Nevertheless, California law does not grant the retraction privileges to the person who publishes a libel in that manner and a person libelled by a letter may recover general damages. The law does not, therefore, give the same protection to persons libelled by a newspaper that it gives to persons libelled by a letter or any means of publication other than a newspaper. This

is an invalid classification. *Atchison, T. & S. F. vs. Matthews,* 174 U. S. 96, 19 S. Ct. 609.

CONCLUSION

The rights which appellant is attempting to protect in this case are those guaranteed by the Constitution of the United States and a decision of this Court is necessary to establish such rights and give this appellant the protection to which he is entitled.

As pointed out in the Jurisdictional Statement, the question is not only of paramount importance to newspapers and the public generally in the entire United States, but the question is unsettled at the present time and it should be answered by this Court.

Respectfully submitted,

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